

103D CONGRESS  
1ST SESSION

# H. R. 2065

To facilitate the creation of Financial Asset Securitization Investment Trusts.

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IN THE HOUSE OF REPRESENTATIVES

MAY 11, 1993

Mr. HOAGLAND (for himself and Mr. SHAW) introduced the following bill;  
which was referred to the Committee on Ways and Means

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## A BILL

To facilitate the creation of Financial Asset Securitization  
Investment Trusts.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “The FASIT Provisions of  
5 1993”.

6 **SEC. 2. FINANCIAL ASSET SECURITIZATION INVESTMENT**  
7 **TRUST.**

8 (a) The heading and table of sections of part II of  
9 subchapter M of chapter 1 of the Internal Revenue Code  
10 of 1986, relating to real estate investment trusts in  
11 amended to read as follows:

“PART II—INVESTMENT TRUSTS

- “Sec. 855A. Financial asset securitization investment trusts.
- “Sec. 855B. Transfers to FASITs.
- “Sec. 855C. Treatment of recognized gains and losses.
- “Sec. 855D. Consistency requirement.
- “Sec. 855E. Treatment of front-loaded income on common ownership interests.
- “Sec. 855F. Tax on certain transfers of ownership interests.
- “Sec. 855G. Additional taxes.
- “Sec. 856. Definition of real estate investment trust.
- “Sec. 857. Taxation of real estate investment trusts and their beneficiaries.
- “Sec. 858. Dividends paid by real estate investment trust after close of taxable year.
- “Sec. 859. Adoption of annual accounting period.”

1       (b) The title of part II in the table of parts of sub-  
 2 chapter M of chapter 1 of the Internal Revenue Code of  
 3 1986 is amended to read as follows:

“PART II. Investment Trusts.”

4       (c) The following new sections are added to part II  
 5 of subchapter M of chapter 1 of the Internal Revenue  
 6 Code of 1986:

7       **“SEC. 855A. FINANCIAL ASSET SECURITIZATION INVEST-**  
 8                                   **MENT TRUSTS.**

9       “(a) DEFINITION.—For purposes of this title, the  
 10 term ‘financial asset securitization investment trust’ and  
 11 ‘FASIT’ mean any entity or arrangement—

12               “(1) for which an election to be treated as a  
 13 FASIT is in effect for the taxable year and all pre-  
 14 ceding taxable years,

15               “(2) which has a taxable year which is a cal-  
 16 ender year,

1           “(3) substantially all of the assets of which, as  
2           of the close of the second calendar quarter following  
3           its formation and each calendar quarter ending  
4           thereafter, consist of—

5                   “(A) money or debt obligations,

6                   “(B) property acquired in connection with  
7           the default or imminent default of a debt obli-  
8           gation held by a FASIT (but only if such prop-  
9           erty would be in compliance with the limitations  
10          of paragraphs (2) and (3) of section 856(e) if  
11          the FASIT were a real estate investment trust),

12                   “(C) instruments or contractual rights in  
13          the nature of a hedge or guarantee against the  
14          economic risks associated with debts issued or  
15          held by the FASIT (including, but not limited  
16          to, interest rate swaps, credit enhancement, and  
17          liquidity arrangements), or

18                   “(D) ownership interests in other FASITs,

19          “(4) the governing documents of which pro-  
20          hibit—

21                   “(A) the acquisition or disposition of as-  
22          sets other than in accordance with the terms  
23          and conditions set forth in the agreements, in-  
24          dentures, or other instruments pursuant to

1           which its qualified debt instruments and owner-  
2           ship interests are issued,

3           “(B) the acquisition or disposition of as-  
4           sets for the primary purpose of recognizing  
5           gains or decreasing losses resulting from mar-  
6           ket value changes, and

7           “(C) the acquisition of any debt obligation  
8           for the primary purpose of realizing income  
9           from the operation, management, rental, leas-  
10          ing, or sale of property acquired or to be ac-  
11          quired in connection with the default or immi-  
12          nent default thereof,

13          “(5) which has one and only one class of com-  
14          mon ownership interests,

15          “(6) which (except as otherwise provided by  
16          regulations) has no ownership interests other than  
17          common ownership interests and preferred owner-  
18          ship interests, and

19          “(7) with respect to which there are reasonable  
20          arrangements designed to ensure that its ownership  
21          interests are held exclusively by—

22                  “(A) corporations to which the provisions  
23                  of section 11 apply,

24                  “(B) other FASITs, or

25                  “(C) pass-through entities.

1 “(b) CLASSIFICATION AND TAXATION OF FASITS.—

2 “(1) GENERAL RULE.—A FASIT shall not be  
3 subject to taxation under this subtitle (and shall not  
4 be treated as a corporation, partnership, or trust)  
5 except to the extent the FASIT (or a portion there-  
6 of) is classified as a corporation by section 7701(i).

7 “(2) DETERMINATION AND ALLOCATION OF  
8 FASIT INCOME.—The taxable income of a FASIT  
9 shall be determined in the same manner as for a  
10 corporation. The constant yield method and the  
11 principles of section 1722(a)(6) shall be applied in  
12 determining all interest and discount income, and all  
13 premium deductions or adjustments, with respect to  
14 all debt obligations held by the FASIT.

15 “(3) TAXATION OF HOLDERS OF OWNERSHIP  
16 INTERESTS.—The holder of an ownership interest in  
17 a FASIT shall take into account its daily portion of  
18 the amount of FASIT taxable income (or net loss)  
19 allocable to ownership interests of the same class for  
20 each day during the taxable year on which such  
21 holder held such interest. The daily portion shall be  
22 determined—

23 “(A) by allocating to each day in any cal-  
24 endar quarter its ratable portion of the amount  
25 of taxable income (or net loss) for such quarter

1 allocable to such class of ownership interests,  
2 and

3 “(B) by dividing the amounts so allocated  
4 to any day among the holders (on such day) of  
5 ownership interests of such class in proportion  
6 to their respective holdings on such day.

7 “(4) AMOUNTS ALLOCABLE TO CLASSES OF  
8 OWNERSHIP INTERESTS.—

9 “(A) FASIT taxable income, to the extent  
10 thereof, shall be allocated to any outstanding  
11 classes of preferred ownership interests, in  
12 order of their respective preferences, in the  
13 same manner that interest and original issue  
14 discount income would accrue on a debt instru-  
15 ment having the same terms. Any remaining  
16 FASIT taxable income shall be allocated to the  
17 class of common ownership interests.

18 “(B) FASIT net losses shall be allocated  
19 first to the class of common ownership interests  
20 until the basis of all such ownership interests  
21 (determined as if held by the original holders)  
22 is reduced to zero. Any remaining net losses  
23 shall be allocated to any outstanding classes of  
24 preferred ownership interests in accordance  
25 with their terms and priorities until the basis of

1 all such ownership interests (determined as if  
2 held by the original holders) is reduced to zero.  
3 Any remaining net losses shall be allocable to  
4 the class of common ownership interests.

5 “(5) DISTRIBUTIONS.—Any distribution by a  
6 FASIT with respect to an ownership interest—

7 “(A) shall not be included in gross income  
8 to the extent it does not exceed the adjusted  
9 basis of the interest, and

10 “(B) to the extent it exceeds the adjusted  
11 basis of the interest, shall be treated as gain  
12 from the sale or exchange of such interest.

13 “(6) BASIS RULES.—The basis of any person’s  
14 ownership interest in a FASIT shall be increased by  
15 the amount of any taxable income, and decreased  
16 (but not below zero) by the amount of any loss,  
17 taken into account under paragraph (3) of this sub-  
18 section by such person with respect to such interest.  
19 Such basis shall also be increased by any contribu-  
20 tions and decreased (but not below zero) by any dis-  
21 tributions to such person with respect to such inter-  
22 est.

23 “(7) SPECIAL RULES.—

24 “(A) AMOUNT TREATED AS ORDINARY.—

25 Any amount taken into account under para-

graph (3) of this subsection shall be treated as ordinary income or ordinary loss, as the case may be.

“(B) LIMITATION ON LOSSES.—The amount of the net loss of any FASIT taken into account by any holder under paragraph (3) of this subsection with respect to any calendar quarter shall not exceed the adjusted basis of the holder’s ownership interest in such FASIT as of the close of such calendar quarter (determined without regard to any basis reduction for net losses taken into account by such holder for such quarter). Any loss disallowed by the preceding sentence shall be treated as incurred by the FASIT in the succeeding calendar quarter with respect to such holder.

“(C) PREMIUM AND DISCOUNT.—Except as otherwise provided in regulations, any amount by which a holder’s basis in an ownership interest differs from the basis determined as if held by the original holder shall be taken into account on a constant yield method.

“(8) Rules similar to those provided by section 860D(2)(B) shall apply to inadvertent failures to



1       comply with the requirements for qualifying as a  
2       FASIT.

3       “(c) QUALIFIED DEBT INSTRUMENTS.—

4               “(1) TREATMENT OF QUALIFIED DEBT INSTRU-  
5       MENTS.—For purposes of this subtitle, a qualified  
6       debt instrument issued by a FASIT shall be treated  
7       as a debt obligation of the FASIT (and as a debt  
8       obligation of a corporation) and not as an ownership  
9       interest therein.

10              “(2) DEFINITION.—A qualified debt instrument  
11       is any instrument issued by a FASIT which is des-  
12       ignated as a qualified debt instrument if—

13                      “(A) such instrument unconditionally enti-  
14       tles the holder to receive a specified principal  
15       amount (or other similar amount),

16                      “(B) interest payments (or other similar  
17       amounts), if any, with respect to such instru-  
18       ment are payable based on one or more rates  
19       that, as of the date of issuance, are fixed or  
20       qualify as permissible variable rates for pur-  
21       poses of section 860G(a)(1)(B)(i),

22                      “(C) such instrument has a stated matu-  
23       rity at issuance no longer than fifteen years,

1           “(D) the instrument’s issue price does not  
2           exceed 125 percent of its stated principal  
3           amount, and

4           “(E) the instrument does not have a yield  
5           to maturity as of the date of issuance that is  
6           more than five percentage points higher than  
7           the yield to maturity on outstanding marketable  
8           obligations of the United States with a com-  
9           parable maturity (based upon a statistically sig-  
10          nificant sampling, a published index, or a simi-  
11          lar objective determination).

12          “(3) TREATMENT OF FORECLOSURE PROP-  
13          ERTY.—For purposes of the preceding paragraph,  
14          principal on a debt instrument issued by a FASIT  
15          shall not be considered to be unconditionally pay-  
16          able, and interest on such a debt instrument shall  
17          not be considered to be payable based on a fixed or  
18          qualified variable rate, if payment of such amounts  
19          is dependent upon the receipt of any payments from  
20          the rental, lease, management or sale of any prop-  
21          erty that was (1) acquired by the FASIT prior to  
22          the issuance of such debt instrument in connection  
23          with the default or imminent default of a debt obli-  
24          gation held by a FASIT, or (2) acquired by the  
25          FASIT at any time in connection with the default

1 or imminent default of a debt obligation that was in  
2 default or imminent risk of default at the time it  
3 was acquired by the FASIT.

4 “(4) STRIPPED INSTRUMENTS.—The trustee or  
5 other fiduciary of a FASIT may separate rights to  
6 principal and interest on any qualified debt instru-  
7 ments issued by the FASIT and may issue certifi-  
8 cates of ownership in such rights to the same extent  
9 as would be permitted in the case of a fixed invest-  
10 ment trust holding such qualified debt instruments.  
11 All such rights arising out of the same qualified debt  
12 instrument shall be treated by the FASIT as a sin-  
13 gle qualified debt instrument.

14 “(d) PREFERRED OWNERSHIP INTERESTS.—For  
15 purposes of this section, a preferred ownership interest is  
16 an instrument that—

17 “(1) is designated as such,

18 “(2) is described in subparagraphs (A), (B),  
19 and (C) of paragraph (2) of the preceding sub-  
20 section, and

21 “(3) does not have an issue price in excess of  
22 its stated principal amount.

23 “(e) COMMON OWNERSHIP INTERESTS.—For pur-  
24 poses of this section, a common ownership interest is an  
25 instrument that is designated as such.

1 **“SEC. 855B. TRANSFERS TO FASITS.**

2 “(a) TREATMENT OF TRANSFEROR.—

3 “(1) RECOGNITION OF GAIN OR LOSS.—Gain or  
4 loss shall be recognized to the transferor on the  
5 transfer of any property to a FASIT in exchange for  
6 an interest or instrument therein. Any increase in  
7 the value of an existing interest or instrument held  
8 by the transferor (or by a party bearing a relation-  
9 ship to the transferor described in section 267(b) or  
10 section 707(b)) attributable to the transfer of assets  
11 shall be treated as the receipt of an additional inter-  
12 est or instrument, as the case may be.

13 “(2) ADJUSTED BASES.—The adjusted basis of  
14 an interest or instrument received in a transfer de-  
15 scribed in paragraph (1) shall be equal to its fair  
16 market value immediately after such transfer.

17 “(b) TREATMENT OF FASIT.—The basis of any prop-  
18 erty received by a FASIT in a transfer described in sub-  
19 section (a)(1) shall be its fair market value immediately  
20 after such transfer.

21 “(c) ACCOUNTING RULES.—For purposes of this  
22 part—

23 “(1) IN GENERAL.—The anticipated cash flows  
24 and fair market value of assets transferred to a  
25 FASIT shall be determined without regard to any  
26 future transfers of assets that the transferor may be

1 obligated or permitted to make. Any such subse-  
2 quent transfer shall be treated as a separate trans-  
3 fer of assets with respect to which there shall be sep-  
4 arately computed—

5 “(A) the FASIT’s basis therein and in-  
6 come thereon, and

7 “(B) any gain or loss to the transferor.

8 “(2) TREATMENT OF REVOLVING LOAN  
9 POOLS.—In the case of any FASIT acquiring obliga-  
10 tions representing extensions of credit on revolving  
11 loan accounts having substantially the same terms—

12 “(A) each extension of credit shall be  
13 treated as a separate obligation transferred to  
14 the FASIT,

15 “(B) the anticipated life of each such obli-  
16 gation shall be determined using a periodic  
17 principal payment rate equal to the reasonably  
18 anticipated periodic rate (determined at the  
19 time of transfer) at which principal payments  
20 on the accounts will be paid, as a proportion of  
21 their outstanding principal balance, and

22 “(C) actual payments of principal (and  
23 losses of principal) shall be allocated among all  
24 outstanding obligations in proportion to their  
25 outstanding balances.

1       “(d) DISTRIBUTIONS OF PROPERTY.—Any distribu-  
2       tion of property with respect to an interest or instrument  
3       of a FASIT (other than a distribution described in section  
4       855C(b)(3)(B)) shall be treated as if the FASIT had sold  
5       such property and distributed the proceeds.

6       “(e) TREATMENT OF RECOGNIZED GAINS AND  
7       LOSSES.—Recognized gains and losses attributable to  
8       transfers described in paragraph (a)(1) shall be taken into  
9       account by the transferor in the manner prescribed in sec-  
10      tion 855C.

11      “(f) BELOW-MARKET LOANS.—For purposes of sub-  
12      section (a) (relating to the recognition of gain or loss upon  
13      the transfer of property to a FASIT) and subsection (b)  
14      (relating to the FASIT’s basis in such property), the fair  
15      market value of any loan that was a below-market loan  
16      when made (within the meaning of section 7872(e)(1))  
17      shall not be considered to be less than the lower of its  
18      outstanding principal amount or the transferor’s adjusted  
19      basis therein.

20      **“SEC. 855C. TREATMENT OF RECOGNIZED GAINS AND**  
21                                      **LOSSES.**

22      “(a) RETAINED INTERESTS AND INSTRUMENTS.—  
23      Subject to subsections (b) and (c), gain (or loss) recog-  
24      nized on a transfer described in section 855B(a)(1) shall  
25      be taken into account in the same manner as the same

1 amount of premium (or discount) on the transferred as-  
2 sets would be required to be taken into account by the  
3 FASIT.

4 “(b) ACCELERATION OF GAIN OR LOSS UPON SALE  
5 OF INTERESTS AND INSTRUMENTS.—

6 “(1) IN GENERAL.—Amounts received by the  
7 transferor with respect to the sale or other disposi-  
8 tion of any FASIT interest or instrument (including  
9 any amounts treated as received with respect to the  
10 allocable portion of any interests or instruments is-  
11 sued directly by the FASIT)—

12 “(A) shall be allocated among the out-  
13 standing assets that were transferred by the  
14 transferor in transactions to which section  
15 855B(a)(1) applied (but not in excess of the  
16 outstanding principal amount of any such as-  
17 sets determined after prior applications of this  
18 paragraph), and

19 “(B) shall be treated (solely for purposes  
20 of subsection (a)) as a payment of principal re-  
21 ceived by the FASIT on such assets.

22 “(2) DEEMED RECEIPTS.—Amounts of prin-  
23 cipal received by a FASIT and used to acquire new  
24 debt obligations in a transfer to which section  
25 855B(a)(1) applies shall be treated for purposes of

1       this subsection as attributable to a redemption and  
2       new issuance of an allocable portion of all outstand-  
3       ing interests and instruments.

4               “(3) EXCEPTIONS.—Paragraph (1) shall not  
5       apply (and appropriate basis adjustments shall be  
6       required) with respect to amounts received—

7               “(A) upon a sale or disposition that is of  
8               a type which would not give rise to the recogni-  
9               tion of gain, or the recognition or allowance of  
10              loss, as the case may be, or

11              “(B) upon a distribution with respect to an  
12              interest or instrument of assets that are sub-  
13              stantially identical to the assets transferred for  
14              such interest or instrument.

15       “(c) COORDINATION.—Following any application of  
16       subsection (b), subsection (a) shall be applied disregarding  
17       pro rata portions of subsequent actual and anticipated  
18       principal payments to the FASIT to take into account the  
19       amounts treated as principal payments in all prior applica-  
20       tions of subsection (b).

21       “(d) INVESTMENT PARTNERSHIP RULES APPLICA-  
22       BLE.—Notwithstanding subsection (a), gain shall be taken  
23       into account to the extent that would be required under  
24       section 721(b) if the FASIT were a partnership (treating  
25       as a single taxpayer all transferors that are members of



1 the same affiliated group of corporations joining in the  
2 filing of a consolidated return).

3 **“SEC. 855D. CONSISTENCY REQUIREMENT.**

4       “(a) ADOPTION OF METHOD OF ACCOUNTING.—Any  
5 transfer of debt obligations to a FASIT in exchange for  
6 an interest or instrument of the FASIT followed by the  
7 retention by the transferor (or by a party bearing a rela-  
8 tionship to the transferor described in section 267(b) or  
9 section 707(b)) of any such interest or instrument for  
10 more than three months, shall be treated as the adoption  
11 by the transferor (and by all members of the same affili-  
12 ated group of corporations joining in the filing of a con-  
13 solidated return with the transferor) of a method of ac-  
14 counting. Such method of accounting shall—

15               “(1) apply to all gains and losses arising from  
16 the transfer of substantially similar debt obligations  
17 to entities described in subsection (b) in exchange  
18 for interests in or obligations of such entities, and

19               “(2) shall require gains and losses to be recog-  
20 nized and taken into account (upon the later of the  
21 transfer or the time at which the entity first be-  
22 comes described in subsection (b)) in substantially  
23 the same manner as if the transferee were a FASIT.

24       “(b) ENTITIES.—An entity is described in this sub-  
25 section if—

1           “(1) substantially all of its assets consist of  
2           debt obligations, and

3           “(2) the entity has outstanding instruments  
4           treated as debt for Federal income tax purposes  
5           (with an adjusted issue price exceeding 50 percent  
6           of the adjusted basis of its assets) that are not  
7           treated as debt on the consolidated financial state-  
8           ment (or similar report or statement) of the trans-  
9           feror for financial or regulatory accounting purposes.

10          “(c) SCOPE OF METHOD.—For purposes of sub-  
11       section (a)(1) of this section, a debt obligation shall be  
12       considered to be substantially similar to a debt obligation  
13       transferred to a FASIT if such obligation is of a type that  
14       was customarily treated (at the time of the transfer to  
15       the FASIT) as an equivalent substitute for the debt obli-  
16       gation transferred to the FASIT by buyers and sellers in  
17       the markets for securities collateralized by such debt obli-  
18       gations.

19       **“SEC. 855E. TREATMENT OF FRONT-LOADED INCOME ON**  
20                               **COMMON OWNERSHIP INTERESTS.**

21          “(a) FRONT-LOADED INCOME MAY NOT BE OFFSET  
22       BY NET OPERATING LOSSES.—

23               “(1) IN GENERAL.—Except as provided in para-  
24               graphs (2) and (3), the taxable income of any holder  
25               of a common ownership interest in a FASIT for any

1 taxable year shall in no event be less than the front-  
2 loaded income for such taxable year. For purposes of  
3 the preceding sentence, all members of an affiliated  
4 group filing a consolidated return shall be treated as  
5 one taxpayer.

6 “(2) EXCEPTION FOR CERTAIN STRUCTURES.—  
7 Paragraph (1) shall not apply to any FASIT for any  
8 periods during which—

9 “(A) the debt obligations held by the  
10 FASIT have an anticipated weighted average  
11 life that is not greater than four years (deter-  
12 mined at the end of each calendar quarter), or,

13 “(B) under regulations, it can reasonably  
14 be anticipated from the structure of the FASIT  
15 that taxable income will not be required to be  
16 included by the holders of common ownership  
17 interests under section 855A(b)(3) materially  
18 faster than would be required if the ownership  
19 interests were subject to taxation under the  
20 rules and principles applicable to debt obliga-  
21 tions.

22 “(3) EXCEPTION FOR BONA FIDE ORIGINA-  
23 TORS.—Paragraph (1) shall not apply to any owner-  
24 ship interest—

1           “(A) that is held by the originator of the  
2           debt obligations transferred in exchange there-  
3           for (or by a member of the same affiliated  
4           group of corporations joining in the filing of a  
5           consolidated return), and

6           “(B) that represents a substantial eco-  
7           nomic interest in the value or performance of  
8           such debt obligations.

9           “For purposes of the preceding sentence, an eco-  
10          nomic interest is substantial if it is reasonably an-  
11          ticipated to represent at least 2 percent of the value  
12          of the debt obligations to which it relates for at least  
13          half of their anticipated weighted average life.

14          “(4) COORDINATION WITH SECTION 172.—For  
15          purposes of section 172, front-loaded income for a  
16          taxable year shall be treated in the same manner as  
17          an excess inclusion is treated under section  
18          860E(a)(5).

19          “(b) FRONT LOADED INCOME.—For purposes of this  
20          section, front-loaded income for the taxable year is the  
21          amount (not less than zero) equal to—

22               “(1) the taxable income taken into account by  
23               the holder of a common ownership interest under  
24               section 855A(b)(3) for the taxable year and for all  
25               prior years, minus,

1           “(2) the amount that would have been required  
2           to be taken into account by such holder for the tax-  
3           able year and all prior years if the common owner-  
4           ship interest were treated as a debt obligation (pro-  
5           viding for the same fixed, variable, and contingent  
6           cash flows as the common ownership interest) origi-  
7           nally issued to the holder on the date of its acquisi-  
8           tion for an amount equal to its fair market value on  
9           that date, minus

10           “(3) the amount determined under this sub-  
11           section with respect to the holder for all years prior  
12           to the taxable year.

13   To the extent the amount described in paragraph (2) re-  
14   quires a determination of the yield to maturity of the hy-  
15   pothetical debt obligation, such yield shall be considered  
16   to be equal to 120 percent of the applicable Federal rate,  
17   unless there is clear evidence that the amount would prop-  
18   erly be determined using a higher yield.

19   **“SEC. 855F. TAX ON CERTAIN TRANSFERS OF OWNERSHIP**  
20                           **INTERESTS.**

21           “(a) IN GENERAL.—A tax is hereby imposed on any  
22   transfer of an ownership interest in a FASIT other than  
23   a transfer to a FASIT, to a pass-through entity, or to  
24   a corporation to which the provision of section 11 apply.

1       “(b) AMOUNT OF TAX.—The amount of the tax im-  
2 posed by subsection (a) on any transfer of an ownership  
3 interest shall be equal to the product of—

4               “(1) the fair market value of the ownership in-  
5 terest on the date of transfer, multiplied by—

6               “(2) the highest rate of tax specified in section  
7 11(b)(1).

8       “(c) LIABILITY.—The tax imposed by subsection (a)  
9 on any transfer shall be paid by the transferor; except  
10 that, where such transfer is through an agent for the  
11 transferee, such tax shall be paid by such agent.

12       “(d) TRANSFEREE FURNISHES AFFIDAVIT.—The  
13 person otherwise liable for any tax imposed by subsection  
14 (a) shall be relieved of liability for the tax imposed by sub-  
15 section (a) with respect to any transfer if—

16               “(1) the transferee furnishes to such person an  
17 affidavit that the transferee is a FASIT, a pass-  
18 through entity, or a corporation to which the provi-  
19 sions of section 11 apply, and

20               “(2) as of the time of the transfer, such person  
21 does not have actual knowledge that such affidavit  
22 is false.

23       “(e) TREATMENT OF PASS-THROUGH ENTITIES.—If,  
24 at any time during a taxable year of a pass-through entity,  
25 the pass-through entity holds (directly or through one or

1 more other pass-through entities) an ownership interest  
2 in a FASIT and a record holder of an interest in the pass-  
3 through entity is neither a corporation to which the provi-  
4 sions of section 11 apply, a FASIT, nor another pass-  
5 through entity, there is hereby imposed on the pass-  
6 through entity a tax, for the taxable year, equal to the  
7 product of—

8           “(1) the amount of taxable income for such tax-  
9       able year attributable to the FASIT ownership inter-  
10      est held (directly or through one or more other pass-  
11      through entities) and allocable to the pass-through  
12      interest held by such record holder, multiplied by

13           “(2) the highest rate of tax specified in section  
14      11(b)(1).

15       “(f) PASS-THROUGH ENTITY.—For purposes of this  
16 section, the term ‘pass-through entity’ has the same mean-  
17 ing as that provided in section 860E(e)(6), except that  
18 such term shall also include S corporations.

19       “(g) EXCEPTIONS.—No tax shall be imposed by sub-  
20 section (e) to the extent a pass-through entity—

21           “(1) holds an ownership interest in a FASIT  
22       representing a retained economic interest in debt ob-  
23       ligations originated by the pass-through entity in  
24       connection with the pass-through entity’s sale of  
25       goods or services, or

1           “(2) holds an ownership interest in a FASIT  
2           for sale to customers in the ordinary course of busi-  
3           ness, or is a dealer in securities and holds an owner-  
4           ship interest in a FASIT for no more than one  
5           month.

6           “(h) EXCEPTION WHERE HOLDER FURNISHES AFFI-  
7           DAVIT.—No tax shall be imposed by subsection (e) with  
8           respect to any interest in a pass-through entity for any  
9           period if—

10           “(1) the record holder of such interest furnishes  
11           to such pass-through entity an affidavit that such  
12           record holder is a FASIT, a corporation to which  
13           the provisions of section 11 apply, or another pass-  
14           through entity, and

15           “(2) during such period, the pass-through en-  
16           tity receiving the affidavit does not have actual  
17           knowledge that such affidavit is false.

18           “(i) WAIVER.—The Secretary may waive the tax im-  
19           posed by subsection (a) on any transfer if—

20           “(1) within a reasonable time after discovery  
21           that the transfer was subject to tax under subsection  
22           (a) steps are taken so that the interest is no longer  
23           held by the prohibited holder, and

24           “(2) there is paid to the Secretary such  
25           amounts as the Secretary may require.



1       “(j) ADMINISTRATIVE PROVISIONS.—For purposes of  
2 subtitle F, the taxes imposed by this section shall be treat-  
3 ed as excise taxes with respect to which the deficiency pro-  
4 cedures of such subtitle apply.

5       **“SEC. 855G. ADDITIONAL TAXES.**

6       “(a) PROHIBITED TRANSACTION TAX.—

7               “(1) IMPOSITION OF TAX.—A tax is hereby im-  
8 posed for each taxable year of a FASIT equal to 100  
9 percent of the net income derived from prohibited  
10 transactions (disregarding any losses from prohib-  
11 ited transactions).

12              “(2) PROHIBITED TRANSACTION.—For pur-  
13 poses of this subsection, the term ‘prohibited trans-  
14 action’ means—

15                   “(A) any acquisition or disposition of as-  
16 sets other than in accordance with the terms  
17 and conditions set forth in the agreements, in-  
18 dentures, or other instruments pursuant to  
19 which its qualified debt instruments and owner-  
20 ship interests are issued,

21                   “(B) any acquisition or disposition of as-  
22 sets for the primary purpose of recognizing  
23 gains or decreasing losses resulting from mar-  
24 ket value changes,

1           “(C) any acquisition of a debt instrument  
2           for the primary purpose of realizing income  
3           from the operation, management, rental, leas-  
4           ing, or sale of property acquired or to be ac-  
5           quired in connection with the default or immi-  
6           nent default thereof, and

7           “(D) the receipt of any income attributable  
8           to an asset which is not described in section  
9           855A(a)(3).

10       “(b) TAX ON INCOME FROM FORECLOSURE PROP-  
11 ERTY.—

12           “(1) IN GENERAL.—A tax is hereby imposed for  
13           each taxable year on the net income from foreclosure  
14           property of each FASIT. Such tax shall be computed  
15           by multiplying the net income from foreclosure prop-  
16           erty by the highest rate of tax specified in section  
17           11(b).

18           “(2) NET INCOME FROM FORECLOSURE PROP-  
19 ERTY.—For purposes of this part, the term ‘net in-  
20 come from foreclosure property’ means the amount  
21 which would be the FASIT’s net income from fore-  
22 closure property under section 857(b)(4)(B) if the  
23 FASIT were a real estate investment trust and all  
24 property acquired by the FASIT in connection with  
25 the default or imminent default of a debt obligation

1       were treated as if it were real property and as if it  
2       were foreclosure property.”

3   **SEC. 3. CONFORMING AMENDMENTS.**

4       (a) The last sentence of paragraph (1) of section  
5   582(c) of the Internal Revenue Code of 1986 is amended  
6   to read as follows: “For purposes of the preceding sen-  
7   tence, any regular or residual interest in a REMIC and  
8   any ownership interest or qualified debt instrument issued  
9   by a FASIT shall be treated as an evidence of indebted-  
10   ness.”

11      (b) Sections 593(d)(4), 856(c)(6)(E), and  
12   7701(a)(19)(C) of the Internal Revenue Code of 1986, are  
13   each amended by adding at the ends thereof the following  
14   sentence: “The provisions of this section applicable to reg-  
15   ular and residual interests in a REMIC shall also apply  
16   to interests and instruments in a FASIT.”

17   **SEC. 4. EFFECTIVE DATE.**

18      The amendments made by sections 2 and 3 shall be  
19   effective upon the date of enactment.

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